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**TESTIMONY OF SHELDON TOUBMAN BEFORE THE GENERAL
ADMINISTRATION AND ELECTIONS COMMITTEE IN OPPOSITION TO SENATE
BILL 16 (“An Act Increasing Agency Efficiency in the Regulation Process”)**

Good afternoon, Senator Cassano, Rep Jutila and Members of the General Administration and Elections Committee. My name is Sheldon Toubman and I am an attorney with New Haven Legal Assistance Association in the benefits unit. I am here to testify in opposition to the Governor’s bill, SB 16.

SB 16 would significantly weaken governmental transparency and the role of the legislature in the issuance of implementing regulations by all state agencies, including by sharply limiting the role the Regulations Review Committee. Coupled with the Governor’s proposed elimination of line item review of agency budgets and of all legislative review of proposed federal waivers for government benefit programs, it would represent a major weakening of the oversight function of the legislative branch.

Section 1- Avoidance of Statutory Obligation to Issue Regulations:

Section 1 of this bill would allow all future laws passed by the legislature to be disregarded to the extent that they mandated an administrative agency to issue implementing regulations. Based on the mere declaration by an agency head unilaterally determining “the statutory provision requiring the adoption of such regulations to be sufficient to enforce the statutory provisions,” as proposed to be added to CGS Section 4-168(c), such an express requirement in future laws passed by future legislatures may simply be disregarded by the executive.

While we understand that in some cases agencies may find the duty to issue regulations burdensome, the solution is for the executive to lobby the legislature as to the lack of need for regulations under **particular** enactments so as to avoid any such obligation in that case. But if it is not successful in that effort with regard to a particular bill, it would be troubling for the executive to then disregard a clear legislative mandate, as section 1 would allow.

Section 2- Avoidance of Public Comment on Expanded “Technical Revisions”

Section 2 of the bill would expand situations in CGS 4-168(h) where “technical amendments” or, newly, even outright repeal of regulations, may occur without prior notice or a hearing or comment period. While the new situations identified in this section sound reasonable, such that amendment or repeal would likely be completely

uncontroversial, there is sometimes room for debate about whether a specific change in a regulation has been “directed by a public act.” In the vast majority of these cases, providing notice will result in no comment or concern. But where there **is** a concern, because the assumption that it is just a technical amendment is challenged, allowing the full review process is appropriate and could result in a reversal of, or revision to, what is in fact a substantive change not mandated by a state statute. Without the opportunity to comment, the agency would be deprived of this valuable input.

Section 3- Expanded Use of “Emergency Regulations” Evading Review

Section 3 would significantly reduce the role of the Regulations Review Committee with respect to emergency regulations issued under CGS Section 4-168(g). Under current law, the agency wishing to issue such regulations must provide at least ten days’ advance notice to this committee before the regulation goes into effect, and the committee then has only ten days following submission to affirmatively reject it, or it is deemed to have been approved. Under the proposal, however, there would be no duty on an agency to refrain from **immediately** implementing the emergency regulation while legislative review is pending, even for these few days. In some situations, if a regulation has already been put into place before legislative committee members see it and have an opportunity to review and reject it, it will tip the balance because the egg cannot then be unscrambled, depriving the committee of a meaningful opportunity for review.

But perhaps most troubling in section 3 is the complete repeal of CGS Section 4-168(g)(3), which provides that, if the necessary steps to adopt a **permanent** regulation are not completed by the expiration of the emergency regulation (which is effective for 120 days, extendable by another 60 days), then the emergency regulation ceases to be effective. This is a critical requirement because, without it, there will be no incentive for the agency to take the necessary steps to adopt a final regulation subject to the full advance notice, hearing and comment period and full review by the Regulations Review Committee required for permanent regulations; the “emergency regulation” may *de facto* become the permanent regulation—for years. Coupled with the additional provision in section 3 removing any opportunity for “public comment” about an emergency regulation even after the fact, these changes would effectively allow the executive to implement permanent regulations with no opportunity for **any** public comment and no opportunity for any meaningful review by the Regulations Review Committee.

The consequence of depriving the legislature and the public of the full review process applicable to permanent regulations cannot be overstated. For example, a few years ago, legal services and private elder law attorneys were part of a stakeholders group that opposed the proposed regulations pertaining to long-term care Medicaid promulgated by DSS under the Deficit Reduction Act (DRA). The Regulations Review Committee rejected the proposed regulations because of concerns raised by the advocacy community and a memorandum written by LCO stating that a portion of the regulations in fact were in violation of federal law. Based on that rejection, there were then negotiations with the stakeholders on the proposed regulations. DSS has since

proposed new DRA regulations. The public and the legislature clearly had input in the process for adopting regulations and it has made a difference.

Section 5- Repeal of Obligation to Report on Agency Non-Compliance

Finally, section 5 of the bill removes the obligation imposed on the Regulations Review Committee co-chairpersons to report annually, during the legislative session, on all recent state statutes requiring issuance of regulations which have not been complied with in terms of a timely submission of proposed regulations to that committee. This is a very important report, because it provides a system for holding to account agencies which do not comply with statutory requirements to issue regulations (and the solution is **not**, as in section 1, to allow agencies to avoid these requirements altogether).

For all these reasons, SB 16 would constitute a dramatic shift away from transparency and a substantial undermining of legislative authority, in a manner not in the public interest. Accordingly, I urge you to reject this bill.

Thank you for the opportunity to speak with you today.